

Statement
United States Senate Committee on the Judiciary
Improving the Administration of Justice: A Proposal to Split the Ninth Circuit.
April 7, 2004

The Honorable Patrick Leahy
United States Senator , Vermont

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Statement Of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Hearing Before The Subcommittee On Administrative Oversight And The Courts
On "A Proposal To Split The Ninth Circuit"
April 7, 2004

Today's hearing is the latest in what has become a series of hearings on matters of limited urgency and importance, but of great political significance to some members of the Republican Party. Instead of focusing this Committee's efforts on oversight of the Department of Justice and FBI and exploring ways to improve our nation's anti-terrorism's efforts, we have held a number of hearings on rewriting the Constitution to limit the first Amendment and stigmatize certain Americans. Today, we are asked to consider playing politics with judicial geography.

I have long regarded political attempts to alter the makeup and structure of our federal judiciary with some skepticism. I do not support politicizing the bench with ideological appointments and I do not support politicizing the bench with geographical alterations to suit the current political winds.

Now before the Senate are two different proposals to split the Ninth Circuit. Yet another proposal with still different parameters is being considered by the House Judiciary Committee. Strikingly, the most recent proposal does not stop at splitting the Ninth Circuit in two. This novel legislation calls for the Ninth Circuit to be split into three separate circuit courts of appeal.

Proponents of the split have long criticized the Ninth Circuit for its size and caseload. They might be interested to note that last year the average length of turnaround for cases before the Ninth Circuit was a month less than the average case lasted in 2002. Further, the Ninth Circuit's average turnaround time has improved 16 percent relative to the national average since 1997.

While I can understand why some might want to have a federal circuit court of appeal that was dominated by individuals from their State, I look forward to receiving testimony justifying not one, but two additional circuit courts. Some of the proponents of these bills have argued that smaller, rural States are disadvantaged by being lumped into a circuit that contains a State the size of California with a substantial urban population base. But surely, they would not argue that Vermont and New Hampshire should be granted their emancipation from the larger, more urban States in the Second and First Circuits. Our federal bench should not be manipulated simply to make each circuit homogeneous.

As others have noted in greater detail, there are a variety of policy reasons that the proposals to split the Ninth Circuit are troubling. At the forefront of my concerns is the cost of this proposal. This Committee should be especially concerned about the allocation of our limited federal resources. I have fought hard to provide our federal judiciary with adequate funds and have been the lead sponsor on legislation to provide necessary cost-of-living adjustments and a significant pay raise to the men and women who serve on the federal bench. In these times of tight budgets both at the federal level and for the Courts in particular, to create an additional one or two federal circuits and to provide for the additional infrastructure and associated staffing arrangements to accommodate them is problematic. I expect that several of our distinguished witnesses will comment on the budgetary impact of this legislative proposal. I look forward to receiving their testimony and thank them for traveling so far to be with us today.

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